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A Proposal on the Law of the Sea

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ABSTRACT — There has been no agreement until now on the breadth of the territorial sea. This study proposes a uniform law on the breadth of the territorial sea. The concept of the three-mile limit is reviewed briefly. The question of national security is analyzed and the consequences of extending the breadth of the territorial sea beyond six miles is also discussed.

The Doctrinal Development of Territorial Sea Law

The subject of the law of the sea is a vital question in the mid-twentieth century. The question of the freedom of the seas has been a central point in numerous international disputes since the early history of human civilization. During the 16th and 17th centuries, the Dutch and the British refused to accept the supremacy of the Portuguese and the Spanish who then ruled the vast oceans with their mighty naval fleets.

In 1609, Hugo Grotius published his *Mare Liberum* (Freedom of the Sea) to counteract any claim of monopoly by one nation to the vast oceans. Grotius' *Mare Liberum*, addressed to "the rulers and the free independent nations of Christendom" has been regarded as a most important law because of the great expansion of commercial enterprise taking place. As a result of expansion, the new growing nations in Europe, for their own interests, preferred the sea to be free for all nations instead of being appropriated by the powerful. The central thesis of Grotius was that the sea was free for all. Grotius stated that no one could gain ownership of a property by possession without occupation. The implication is that since the ocean cannot be occupied effectively, it is *res communis* (common to all), that is, "belongs to no one and open equally to all." [1]

The writing of Grotius was attacked by other writers (Grotius was at that time in the minority among the writers), one of whom was John Selden. In 1618 Selden published his *Mare Clausum*, stating that parts of the sea had actually been appropriated by England.[2] In the 18th century Grotius' law gained support from van Bynkershoek, whose work, *De Dominio Maris Dissertatio* (Freedom of the Seas), was published in 1703.[3]

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1. Hugo Grotius, *Mare Liberum*, translated by Magoffin, *The Freedom of the Seas*. London: Oxford University Press, 1916, p. 2.

2. John Selden, *Mare Clausum*, translated in English, London, 1662, p. 7.

3. Cornelius van Bynkershoek, *De Dominio Maris Dessertatio*, English translation by Magoffin. *Freedom of the Seas*. London: Oxford University Press, 1923, p. 13.

As a result of the publication of Bynkershoek's work at the beginning of the 18th century, the question of the appropriation of the sea opened another debate. Bynkershoek was concerned in *Freedom of the Seas* with the question of delimitation of the territorial sea immediately adjacent to the coast. Bynkershoek recognized the fact that the seas could be effectively occupied to the maritime belt measured by the range of a cannon shot.[4]

Bynkershoek thus assigned to a state the dominion of the adjacent sea (Mare Proximum) within the range of a cannon shot from the shore where guns were actually in position. Marginal waters were thus subject to possession, occupation and, therefore, ownership. Bynkershoek's formula of cannon range was gradually adopted by many states in fixing their territorial waters. Since there was not a clear agreement among the nations at that time on the precise limit of territorial waters, publicists refused to accept the Bynkershoek formula in the beginning. It was not until sometime later in the 18th century that writers gradually recognized the cannon shot limit.[5]

With the change of doctrine came the change of practice. The principles of the freedom of the seas and a narrow breadth of territorial sea was accepted. By 1900 the theoretical principle of the three-mile or one league limit had been adopted or acknowledged as law by some 20 states. Even though other states did not acknowledge the three-mile limit, they did not contest its validity. It may, therefore, be said that at the turn of the century the three-mile limit had been accepted as the customary rule of international law. A notable exception was the Scandinavian countries who had adopted a four-mile limit of territorial waters.

State Practice from 1930 to 1958

From 1930 to the 1958 United Nations Conference on the Law of the Sea, the practice of states in regard to the extent of territorial waters in the 20th century had been very arrogant in their claim to the limit of territorial waters. At The Hague Conference on territorial waters, States for the first time challenged the rule of international law fixing the breadth of the territorial waters at three miles. The failure of the 1930 Conference at The Hague to set a precise limit on the breadth of the terri-

4. *Ibid.*, Chapter 2.

5. Emmerick Vattel, *Droits des Gens*, English translation by Charles Fenwick, *Classic of International Law*. Washington, 1916, p. 65. Though Vattel did not come forward to support the three-mile limit but did support the complete jurisdiction of the sea by the costal state.

torial sea provoked some states to extend their territorial waters beyond the customary three-mile limit. The primary motivation threatening the extension of territorial waters seemed to be the desire for greater control of fishing. Though some states challenged the law they did not extend their territorial waters beyond the customary three-mile limit until World War II. The large number of states claiming more than three miles of territorial waters prior to the Geneva Conference on the Law of the Sea did so for the first time after the conclusion of the war.

The Legal Situation at the Opening of the 1958 Geneva Conference on the Territorial Waters

The increasing use of the sea and the products of the sea since World War II have made it essential that states give much greater attention to the question of control of territorial waters. The desire to control fishing particularly was probably the motivation behind the action taken for extending the territorial waters. On the basis of state practice in early 1958, just prior to the Geneva Conference on the Law of the Sea, there were no more than 27 of the 73 coastal states who claimed a specific breadth of territorial sea in excess of three miles. Chile, Ecuador, El Salvador, and Peru claimed zones of 200 miles. The disputes over territorial waters were further widened at the opening of the Geneva Conference.

The failure of the 1958 and 1960 Geneva Conferences on the Law of the Sea under the auspices of the United Nations extended the claims of nations for wider control of the sea unilaterally. A major problem of high international concern involves the question on the breadth of the territorial sea. How far seaward should a state's sovereignty extend? Planes and ships have been fired on and international incidents over coastal fishing have taken place. In recent years, several of the newly independent states have unilaterally extended their territorial waters to 12 miles. At the present moment 40 states still claim three-mile limits; 34 states claim 12-mile limits; 21 states claim six–mile limits; while others claim four miles or more. It seemed now that the basis for claiming wider territorial waters — other than fishing for the purpose of food — is the question of national security. Growing nationalism in the world with tensions also causes many nations to extend their territorial waters claims. It is probably for prestige that some of the newer states claim wider territorial waters in order to keep up with the neighboring states.

A realistic appraisal of the situation would seem to indicate that a change of position in this area in the interest of the world is desirable instead of assertions of sovereignty over the immense areas of the high seas. The question of the extent of the territorial sea should be examined in the light of some of the pertinent arguments that have been advanced in favor of extending the three-mile limit.

A Proposal on the Breadth of the Territorial Sea

The principle of the freedom of the seas must be maintained without further extending the territorial waters. It is, therefore, urgent to find a solution to this problem by enacting a uniform law through international convention. Unless this is done soon, many of the world's strategic straits and narrow water channels along the continental margins and between islands would be converted from high seas to territorial waters. Therefore, a proposal for a minimum extension of six miles of territorial waters on the breadth of the territorial sea should be allowed to all nations. Such an extension would better serve the freedom of the oceans; otherwise there is likely to be a continuation of serious international incidents and encroachment of the oceans. An extension of the territorial sea is proposed here as a solution only after an objective analysis reveals that the problem cannot be resolved within the context of the concept of *res communis* or on the reasoning of the traditional three-mile limit, and that there is an actual need for extending that limit.

The extension of territorial waters to six miles without further extension will serve the fishing resources adjacent to coastal states. The existing law concerning conservation in seas adjacent to foreign states is quite adequate. In fact, the work of the Geneva Conference on fish conservation and related matters, if ratified by a sufficient number of states, will in almost all cases eliminate whatever legitimate need there might be for an extension of the territorial sea.

Furthermore, the law on the continental shelf should be adequate for any mineral or other natural resources to be claimed. Any claim beyond the six-mile proposal of territorial waters does not seem to warrant any justification. Unilateral claims to sovereignty or other forms of exclusive control over waters heretofore recognized as high seas cannot be regarded as valid. This is not to say that the reasons, legitimate or otherwise, that motivate such claims should be ignored. The remedy is not unilateral action; an effort should be made to reach agreement on the principles of that law. The complexity of the maritime boundary limit issue has also become for many a political rather than a legal question.

Effect upon Shipping

The extension of territorial waters to more than six miles might well create further shipping problems. Efforts by merchant ships to avoid violating the regulations of the coastal states in areas that are now open to free navigation could well lead to increased shipping costs, less profit to the producers of the cargo carried, and higher prices to the consumer. The increased shippers' costs would thereby be borne by the countries dependent upon unhampered sea-borne commerce for their economic existence, and would particularly affect many of the newly independent countries who have favored larger extension of the territorial sea.[6]

It would be extremely expensive for any state with a sizable coastline to patrol adequately more than six miles of territorial sea. The United States, for example, has estimated that an extension of 12 miles of territorial water would necessitate an initial capital outlay of $8 mil-

6. Arthur H. Dean, "The Law of the Sea," *Department of State Bulletin*, 38 (1958), pp. 576–577.

lion and an increase in annual operating cost of $1,500,-000 for each 100 miles of coastline, or an annual increase in expenditure of $180 million for the continental United States alone.[7] The newly developing nations cannot meet any extensive costs to patrol their coastlines effectively if the territorial sea should be extended to 12 miles. If a state effectively patrols its coastlines, there is no point in demanding a wider territorial sea; her sovereignty might be violated by other states.

Effect upon Aircraft

Unlike ships that sail the seas, aircrafts have no "right of innocent passage" over territorial waters. Only above the high seas is there an absence of any restrictions pertaining to sovereign rights. The complicated structure of international airways with their technical requirements must in all cases conform to the sovereign pattern of land and the marginal seas. What would happen to aircraft when claim to the ocean is extended to 12 miles? What would happen to the safety of air traffic? Each mile in the air denied to commercial aircraft — as by demands for greater breadth of the territorial sea — offsets that much the great advances made by the aeronautical industry. Planes of one state may fly over the territorial sea of another state only by bilateral or multilateral agreements, and such accord is by no means always assured in the present–day world. What then is the fear of foreign aircraft flying over a state's territory?

With the extension of territorial waters, aircraft must fly many extra miles to avoid overflight of certain sovereign territory. The unreasonable extension of territorial waters will only harm commercial aircraft, since military aircraft is forbidden to fly over the air space and territorial waters of another state without prior consent, or without the risk of anti-aircraft fire. The effect on military aircraft, however, would be even more drastic since it has no right of innocent passage over straits connecting areas of the high seas.

The Question of National Security

The law of the territorial sea is linked closely with the question of national security of the coastal State. Thus the doctrine of the freedom of the seas is not a mere historical relic of the so-called time when maritime law was developed; the question of coastal defense was clearly included. The question of national security became an important issue both at the 1958 and the 1960 Conferences on the Law of the Sea, and was particularly noted by states urging 12-mile limits on contiguous zones, aside from problems of fishing, customs control, fiscal, immigration, and sanitary controls. The principal difficulty was that a number of the participating delegations were wholly unwilling to accept a six–mile territorial sea unless it were to be accompanied by recognition of protective controls over the contiguous zone.

The United States delegate in 1960, referring to the question of security, indicated that the adoption of a 12–mile limit for the territorial sea would restrict the freedom of navigation and result in longer trade routes and, hence, push up shipping costs and commodity prices. This view was challenged by the Soviet delegate, who pointed out that the security question of a state is well safeguarded by the generally recognized right of innocent passage. "Furthermore, the free passage of ships and commercial aircraft along established international routes which crossed the waters of foreign States was adequately safeguarded in specific multilateral and bilateral agreements which would not be affected by an agreement on the breadth of the territorial sea." [8] As indicated earlier, the security consideration was also referred to in support of the opposite policies, that is, the older maritime powers saw no objective ground to claim the wider extent of the territorial sea for the purpose of defending the coastal State. Since the coastal State could be defended likewise by not extending the breadth of the territorial sea or the contiguous zone as demanded by the 12–mile bloc for a wider extension. However, some of the newly developing states from their past experiences indicated that they were fearful of possible approach of foreign warships to their off–shore areas. The following statements made by the delegates from the developing states are worth noting (India):

> 1. For purposes of security, the breadth of the territorial sea was immaterial in time of actual hostilities. It was in situations short of war that the breadth was important to coastal States. Some countries seemed to fear that if they were at war they might have difficulties in the waters of neutral States with a twelve-mile territorial sea. Surely, however, the interests of coastal States in peacetime took precedence over the interests of non-coastal States in time of war.
> 2. The domination of smaller countries by the Great Powers was still a vivid reality. Small countries were fearful of any encroachment by land or sea, particularly of the prolonged sojourn of foreign warships in their adjacent waters, and were anxious for that reason to lay down a limit of twelve miles for the territorial sea. It would not help the cause of codification of international law if that genuine apprehension on the part of small countries was ignored.[9]

Every state naturally wishes to safeguard its national security and the well being of its people when determining the breadth of its territorial sea and fishery limits, and due consideration should be given to the needs and circumstances of coastal States. In demanding a wider territorial sea limit for security, the developing countries were also fearful of the "gun boat" diplomacy of the great powers from their past experiences. For example, the United Arab Republic delegate stated that ". . . he would emphasize that many small countries were deeply apprehensive about the possibility of foreign warships and aircraft staging demonstrations of force off their coasts." [10] The representative of the U.A.R. also referred to such demonstrations as a possible means of intimidating the coastal States.[11] The Iranian representative stated

7. *Ibid.*, p. 577.

8. *Second United Nations Conference on the Law of the Sea, Official Records*, A/Conf. 19/8, 1960, p. 39.

9. *Ibid.*, p. 77; A/Conf. 19/SR. 12, 1960, p. 7.

10. *Ibid.*, p. 102.

11. A/Conf. 19/C. I/SR. 17, 1960, p. 3.

that "many African, Asian and Latin American States" had been subjects of colonialism based mainly on naval power. "The tragic memory of the appearance of warships in the coastal sea, threatening any liberation movement in those countries, was still unforgettable." [12]

The United States argued against extending the breadth of the territorial sea for 12 miles for its own security interest. The following statements made by the Department of State Legal Advisor seem to support it:

> If the territorial sea were uniformly extended out to twelve miles, enemy submarines could operate in the territorial waters of neutral states with excellent chances of remaining undetected. This would be particularly true of modern submarines with atomic power, which are able to remain submerged for long periods of time. In time of war our surface ships cannot operate on nor can our aircraft fly over territorial waters of neutral States without violating the neutrality of these States.
>
> The dangers presented by an extension of the breadth of the territorial sea from a military standpoint are by no means limited to the perils of submarine warfare. If territorial seas were uniformly extended out to twelve miles, the operation of our Sixth Fleet in the Mediterranean would be greatly circumscribed. The Straits of Gibraltar in their entirety would become territorial waters. . . .[13]

From the United States' point of view as discussed above, for the purpose of security it was unnecessary to broaden the territorial sea, since the coastal state exercises complete sovereignty over the belt subject to the right of innocent passage, when the basic purpose can be served just as well by a limited jurisdiction over an additional belt of the contiguous high seas. The United States was particularly concerned with the security of a nation, but from a completely different aspect; as the delegate of the United States to the Geneva Conference on the Law of the Sea put it,

> The extension of the territorial sea of neutral nations might in many instances increase the striking power of enemy submarines. This is because normally submarines cannot safely operate within three miles of the shore. However, if the territorial sea were extended to twelve miles, an enemy submarine (particularly a nuclear submarine which could operate silently for long periods without surfacing) would be able to move about undetected in a neutral State's territorial sea, whereas our surface ships could not operate there without violating the State's neutrality.[14]

Dean also thought that it would not be advisable to restrict maneuvering of the United States fleet as a result of wider extension of the territorial sea. According to Dean, the operations of the Sixth Fleet in the Mediterranean Sea would have been restricted and the landing of United States marines in Lebanon would have been legally impossible. The operations of the Seventh Fleet to defend Quemoy and Matsu on the Formosa Strait would have been considerably hindered if the territorial sea had been extended to 12 miles.[15] The United States had also indicated at the 1958 Conference on the Law of the Sea that the coastal State had some privileges in its territorial sea already, without necessarily extending the breadth and the contiguous zone to 12 miles.[16]

The same view was also advanced by the Canadian delegate at the 1960 Conference who added that "the extension of the territorial sea beyond . . . adds nothing whatever to the ability of any country to defend itself under modern conditions." [17] The United Kingdom delegate pointed out, in reference to modern warfare, that policing and controlling in the wide territorial sea were difficult and costly and that, since it became hard to fix precisely the position of ships at sea, the likelihood of incidents would be increased and the safety of coastal states would be jeopardized as the result.[18] This reasoning was intended for those states demanding wider territorial sea for security purposes.

The delegate of the Byelorussian Socialist Soviet Republic sought to explain the real motives of the United States in advocating a narrow territorial sea, rather than 12 miles of territorial sea, in the following terms: "The main objective of the champions of the six-mile limit was to obtain for their naval forces unconditional, so-called legitimate, access to foreign waters close to coasts in which they were interested for strategic or political reasons." [19] The Byelorussian delegate then quoted the statements made by Dean, the chairman of the United States delegation to the United Nations Conference on the Law of the Sea, at the Foreign Affairs Committee of the United States Senate, on January 20, 1960:

> Our navy would like to see as narrow a territorial sea as possible in order to preserve maximum possibility of deployment, transit and manoeuvreability on and over the high seas; free from the jurisdictional control of individual States.
>
> There are approximately one hundred sixteen important international straits in the world which could

12. He was referring to the 1958 landing of United States marines in Lebanon to defend the country, A/Conf. 19/8, 1960, p. 104.

13. Based on a lecture before the American Canne Association at Chicago, see Loftus Becker, "The Breadth of the Territorial Sea and Fisheries Jurisdiction," *Department of State Bulletin,* 40 (March 16, 1960), p. 371.

14. Arthur H. Dean, "Freedom of the Seas," *Foreign Affairs,* 37 (1958), pp. 89–90.

15. This statement is not clear what differences it should make legally or otherwise, since the landing of United States troops was invited by the Lebanese Government, unless, Mr. Dean was implying the movement of the Fleet along the neighboring coastal States would have been restricted, if twelve miles belt had been claimed by those coastal States.

16. A. H. Dean, "The Geneva Conference on the Law of the Sea: What was Accomplished," *AJIL,* 52 (October, 1958), pp. 607–611; *United Nations Conference on the Law of the Sea, Official Records of the First Committee,* A/Conf. 13/39, 1958, 5. 26.

17. *Second United Nations Conference on the Law of the Sea, Official Records,* A/Conf. 19/8, 1960, p. 50; *Official Records of the Second United Nations Conference on the Law of the Sea, Committee of the Whole, Verbatim Records of the General Debate, A/Conf.* 19/9, 1960, p. 416.

18. *Ibid.,* p. 56.

19. *Ibid.,* p. 105, A/Conf. 19/C. I/SR. 17, 1960, p. 13.

be the choice of a limit for territorial seas. All would become subject to national sovereignties if a six mile rule were adopted . . . of the fifty-two straits which would become subject to national sovereignties under a six mile rule, only eleven would come under the sovereignty of States which would appear likely to claim the right to terminate or interfere with transit of our warships or aircraft, while denial of passage through these eleven straits would present a defense capability impairment, that impairment is believed to be within tolerable operating limits. On the other hand, under the twelve mile territorial sea rule, eighteen straits would come under the sovereignty of States which possibly would claim the right to terminate or interfere with the transit of our warships or aircraft, and, of conclusive importance for defense purposes, the denial of passage through these additional straits would present for us a completely unacceptable impairment of our defensive mobility and capability.[20]

Some of the delegates observed the United States views, as quoted by the Byelorussian delegate, as highly important psychological factors in the United States proposal for not wanting a 12–mile limit; and therefore, they thought more of their national security, but not in the terms expressed by the United States. They demanded wider territorial sea for the purpose of defense. On the other hand, the 12-mile bloc thought that the motives behind the United States Government refusal to accept a 12–mile limit was primarily for defense reasons. The following statement seems to support this position:

A complete analysis and comparison of the effect of a six mile versus a twelve mile territorial sea has led to the conclusion, concurred in by the Joint Chiefs of Staff, that the United States should strive to achieve agreement on as narrow a territorial sea breadth as possible, but in any event not to exceed six miles.[21]

The United States had also established various security zones for its national security against possible surprise attack. The Air Defense Identification Zone (ADIZ) and the Canadian Air Defense Identification Zone (CADIZ). These security identification zones had been put forward as zones of control necessary for the self-defense of the coastal States. With such zones, vast areas of the oceans are covered in the Pacific and Atlantic Oceans.[22] Although the freedom of flying over the high seas is recognized by international law, there is, however, danger to these security zones because they still restrict aircraft of other nationalities flying close to these zones. As Dean has said,

There is no right for aircraft to overfly another nation's territorial sea, except under a treaty, with its consent, or pursuant to the Chicago Civil Aviation Convention of 1944 as to the contracting parties there to.[23]

Examples of incidents clearly indicate the danger of such zones. Though the United States and Canada were not responsible, the Soviet Union had ruthlessly shot down United States planes and interrupted commercial as well as military planes on the coasts of the Bering Sea and the Kurile Islands.[24]

In pursuance of the Convention on the Territorial Sea and Contiguous Zone, a State may not create a special security zone adjacent to the territorial sea, restricting the navigation of foreign vessels. Especially during peacetime, claims to security zones could lead to the destruction of the principle of the freedom of the seas. Even Bulgaria introduced a proposal at the 1958 Conference that "the coastal State shall not use the continental shelf for the purpose of building military bases or any installations which are directed against other states."[25] This proposal was defeated together with an Indian proposal of similar nature.[26] The Convention on the Continental Shelf purposely did not deny the right of the coastal state to build defense installations on its continental shelf. However, it is quite clear to expect that such defense installations as those permitted for conservation to result "in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea . . ."[27]

The result would be complete chaos if every state fearful of aggression by other states could extend its sovereignty arbitrarily over parts of the high seas. Moreover, it is questionable whether in view of recent technical and scientific developments, a security zone is of significant strategic value. The following statement is illustrative:

When we recall that three miles once provided military security because it was the distance of cannon shot from shore, and reflect that missile range is now five thousand miles or even more, it appears likely that the maintenance of a belt of territorial

20. Statements made before the Foreign Affairs Committee of the United States Senate on January 20, 1960, by Mr. Dean; see "Department Seeks Senate Approval of Conventions on Law of Sea," *Department of State Bulletin*, 42 (January, 1960), pp. 259–260; *Second United Nations Conference on the Law of the Sea, op. cit.*, p. 106.

21. Dean, in "Department Seeks Senate Approval of Conventions on Law of Sea," *op. cit.*, pp. 260–261. The British were also preoccupied with the defense policy, since the United Kingdom had experienced in both wars against Germany in 1914 and in 1939, due to the use of Germany of Norwegian neutral territorial waters. See D. W. Bowett, "The Second Conference on the Law of the Sea," *International and Comparative Law Quarterly*, 11 (1962), p. 416.

22. McDougal tries to justify the encroachments on the freedom of the seas in the case of experiments near Bikini by invoking the necessary self-defense of the United States and the free world. See McDougal, et. al., "The Hydrogen Bomb Tests in Perspective: Lawful Measures for Security," *Yale Law Journal* (1954-55), p. 648; see also J. A. Martial, State Control of the Air Space over the Territorial Sea and the Contiguous Zone," *Canadian Bar Review* (1952), pp. 245–263.

23. A. H. Dean, "The Geneva Conference on the Law of the Sea: What was Accomplished," op. cit., p. 607, footnote 8.

24. For various incidents as described by the Soviets for violating their security zone, see *New York Times*, July 17, 1960 p. 5, E; *ibid.*, July 22, 1960, p. 1; *ibid.*, June 16, 1960, pp. 45, 48.

25. A/Conf. 13/C. 4/L. 41, 1958.

26. A/Conf. 13/C. 4/L. 57, 1958.

27. *Ibid.*, article 5, par. I.

seas for military purposes is unnecessary or even impossible. . . .[28]

Conclusion

The extension of the territorial sea of neutral nations in time of war might in many instances increase the striking power of enemy submarines since, normally, submarines cannot safely operate within three miles of the shore. If the territorial sea were extended to 12–miles, an enemy submarine, particularly a nuclear submarine that could operate silently for long periods without surfacing, would be able to move about undetected in a neutral states' territorial sea. Therefore, the argument that extension of the territorial sea is necessary in order to provide for national defense does not seem to be very convincing. Most states have great difficulty in meeting their obligations as neutrals within a three-mile territorial sea.

As a matter of fact, the Scandinavian countries had retreated from four miles to three miles in time of war, and Norway's failure, early in World War II, to perform its obligations within three miles actually prejudiced its neutrality. During the winter of 1939-1940, Germany evaded a British blockade by moving Swedish iron ore through Norwegian waters from Narvik, Norway, to the mouth of the Baltic.[29] Norway, however, was unable to prevent German submarines from sinking British and neutral vessels within Norwegian territorial waters. England had to mine the Norwegian waters, thus forcing Germany to use the high seas. The greatest weakness, therefore, in the argument that the territorial sea should be extended for purposes of defense in the interest of the coastal state to 12 miles does not seem to be logical. The advances of modern technology, including the intercontinental ballistic missile, are merely additional proof of the fact that the problem of defense cannot be solved in terms of miles of territorial sea.

Insofar as the breadth of the territorial sea is concerned, many of the United Nations delegates had little or no inclination to discuss or consider the merits of various proposals as principles of international law or as methods for meeting new needs within the existing framework of international law. Moreover, the practice of bloc voting was another factor that tended to discourage states from supporting any proposal. The entire Arab bloc was committed for political reasons to support the 12–mile limit in the hope that it might enhance their ability to legally close off the Gulf of Aqaba, which is less than 24 miles in breadth at its widest point.

In conclusion, it can be said that the demands of coastal states for security purposes have been already satisfied to some extent by some legal institutions other than the contiguous sea zone. When a foreign vessel is detected in the act of some offense within the territorial sea, the institution of "hot pursuit," which has been recognized by Article 23 of the Convention on the High Seas, permits pursuit and capture of the vessel on the high seas. Besides, there are conventions or treaties between states for protection of smuggling or other activities. It can also be argued that if a state's security is in danger of infringement of its legitimate interests, the territorial sea belongs to the coastal state as a part of its territory already. The right of innocent passage was safeguarded in Section III of the Convention on the Territorial Sea and the Contiguous Zone adopted in 1958. Whether a state seeks a six–mile belt of territorial sea or a 12–mile belt of territorial sea, it seems that neither limitation is very pertinent to security because modern nuclear weapons and nuclear submarines are capable of doing all the destruction without approaching the shore of a State.

28. Lawrence W. Wadsworth, "The Changing Concept of the Territorial Seas," *World Affairs*, 123 (1960), p. 69.

29. See Winston Churchill, *The Gathering Storm*. Boston: Houghton Mifflin Co., 1948, p. 531.

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